

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOE DASILVA, JR.,

Plaintiff,

-vs-

Case No: 2:20-cv-11358
Hon. Mark A. Goldsmith
Magistrate Judge Anthony P. Patti

MARK ESPER, individually and in
his official capacity as Secretary of
the U.S. Department of Defense;
SEAN EDWARDS, individually and
in his official capacity as Chief of
U.S. Army Detroit Arsenal Fire
Division; and MARTIN POTTER,
Individually and in his official
capacity as Assistant Chief of U.S.
Army Detroit Arsenal Fire Division,

Defendants.

THE LAW OFFICE OF
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DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant Martin Potter, by and through his counsel, Bogas & Koncius P.C., moves to dismiss the First Amended Complaint as against him where this Honorable Court lacks subject matter jurisdiction over some of Plaintiff's claims pursuant to Rule 12(b)(1) and Plaintiff fails to state a claim upon which relief may be granted pursuant to Rule 12(b)(6). Plaintiff's First Amended Complaint should therefore be dismissed with prejudice for the reasons set forth more fully in the brief in support of this Motion as filed by the United States Attorney's Office on behalf of the Federal Defendants in this matter. (Dkt. # 32)

Pursuant to Local Rule 7.1, Defendant sought concurrence on this motion on March 18, 2021, but such concurrence was not given.

Respectfully submitted,

BOGAS & KONCIUS, P.C.
Attorneys for Defendant
Martin Potter

By: /s/ Brian E. Koncius
Brian E. Koncius (P69278)
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Bingham Farms, MI 48025
248.502.5000

Dated: March 18, 2021

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DEFENDANT'S BRIEF IN SUPPORT OF HIS MOTION TO DISMISS

Defendant Martin Potter concurs with and relies upon the Brief filed by the Federal Defendants in this matter and adopts its arguments as they relate to him as if fully set forth herein. (Dkt. # 32)

For the reasons stated therein, the Complaint fails to state a claim upon which relief may be granted and should thusly be dismissed with prejudice.

Respectfully submitted,

BOGAS & KONCIUS, P.C.
Attorneys for Defendant
Martin Potter, in his individual capacity only

By: /s/ Brian E. Koncius
Brian E. Koncius (P69278)
31700 Telegraph Road, Suite 160
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248.502.5000

Dated: March 18, 2021

CERTIFICATE OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

BRIAN E. KONCIUS, hereby certify that on March 18, 2021 I electronically filed the foregoing documents with the Clerk of the Court using the ECF System which will send notification of such filing to the following: Keith Altman (81702) and Benjamin A. Anchill (P70968).

/s/BRIAN E. KONCIUS
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LOCAL RULE CERTIFICATION

I, Brian E. Koncius, certify that this document complies with Local Rule 5.1(a), including: double-spaced (except for quoted materials and footnotes); at least one-inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 point (for proportional fonts). I also certify that it is the appropriate length. Local Rule 7.1(d)(3).

s/Brian E. Koncius
BRIAN E. KONCIUS
Bogas & Koncius, PC